

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**JAMES WALTER DURAND, #167567**

**PLAINTIFF**

**v.**

**CIVIL ACTION NO. 1:22-cv-142-TBM-RPM**

**BURL CAIN**

**DEFENDANT**

**ORDER**

This matter is before the Court on submission of the Report and Recommendation [16] entered by United States Magistrate Judge Robert P. Myers on November 2, 2022. Judge Myers recommends that Burl Cain’s Motion to Dismiss [11] be granted and that James Walter Durand’s Petition for Writ of Habeas Corpus be dismissed without prejudice for failure to exhaust state court remedies. Durand has not filed an objection to the Report and Recommendation, and the time for doing so has expired. Burl Cain, however, timely filed a partial Objection [17] to the Report and Recommendation. Cain does not object to the dismissal of this action without prejudice, but instead seeks to “clarify the proper state law avenue for a defendant to exhaust a challenge to a revocation.” [17], pg. 2.

In his Objection, Cain asserts that there is no direct appeal from an order revoking probation under Mississippi law. *See Rudd v. State*, 303 So. 3d 841, 843 (Miss. Ct. App. 2020) (finding that an “order revoking probation is not appealable.”). Instead, Cain submits that Durand may challenge his revocation under the Mississippi Uniform Post-Conviction Collateral Relief Act as set forth in Mississippi Code § 99-39-1. *See id.* (holding that complaints about a revocation may be pursued “through the Mississippi Uniform Post-Conviction Collateral Relief Act.”). The Court finds Cain’s partial Objection well-taken.


IT IS THEREFORE ORDERED AND ADJUDGED that Burl Cain's partial Objection [17] to the Report and Recommendation is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that the Report and Recommendation [16] is ADOPTED as to the recommendation that James Walter Durand's Petition for Writ of Habeas Corpus [2] be dismissed for failure to exhaust state court remedies.

IT IS FURTHER ORDERED AND ADJUDGED that Burl Cain's Motion to Dismiss [11] is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that James Walter Durand's Petition for Writ of Habeas Corpus [2] is DISMISSED WITHOUT PREJUDICE for failure to challenge his revocation to the Mississippi Supreme Court under the Mississippi Uniform Post-Conviction Collateral Relief Act in Mississippi Code § 99-39-1.

This, the 22nd day of December, 2022.

  
TAYLOR B. McNEEL  
UNITED STATES DISTRICT JUDGE